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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,403	07/29/2005	Vernon Peregrin Joynt	2648CS-1	2826
22442	7590	06/27/2008	EXAMINER	
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			MOHANDESI, JILA M	
			ART UNIT	PAPER NUMBER
			3728	
			MAIL DATE	DELIVERY MODE
			06/27/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,403	<b>Applicant(s)</b> JOYNT ET AL.	
	<b>Examiner</b> JILA M. MOHANDESI	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 20-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/30/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/30/2004</u> .                                              | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 18, the phrase "a layer of material having a low acoustic speed" is vague and indefinite. Inasmuch as it has not been defined as what is considered to be a low acoustic speed.

Claims 3 and 14, recite the limitation "the acoustic speed of glass" in lines 1 and

2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-8 and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO01/18479 (The Commonwealth of Australia, The Secretary of Defense) hereinafter Krstic. Krstic discloses an article of protective footwear for a human having a composite sole including an outer sole (see Figures 1 and 2) along one extremity of the article of footwear (boot 1), a spaced inner sole (open honeycomb structure 18) for seating a foot of a user, and a sole volume intermediate the outer and the inner soles, the composite sole including in said sole volume a shock wave guide member (steel plate 5, DETSHEET 8 and frangible absorbing layer 16b which are partly made of steel, which is believed to be prone to cracking at a crack propagation velocity lower than its acoustic velocity, it also shows a blocking material having a low acoustic speed, see plug 19) oriented to guide shock waves caused by a landmine explosion obliquely away from said foot in use; the shock wave guide member being of a material which has an acoustic speed at least higher than 3000 m/sec and which is prone to being cracked by shock waves at a speed of crack wave guide member and the inner sole.

With respect to the material of the layers, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 16, and a liquid proximate the shock wave guide member, see laminated sheets of Kevlar impregnated fabric of wedge shape (17) in Figure 2 embodiment.

Krstic discloses the obvious method of protecting a foot of a human from effects of a landmine explosion underneath said foot, including: a guiding shock waves caused by the landmine explosion obliquely away from said foot by means of a correspondingly obliquely oriented shock wave guide member (plate 5, see column 3, lines 13-19) embedded in a shoe volume of an article of footwear worn by the human; cracking the material of the shock wave guide member by means of said shock waves at a speed of crack progression lower than the acoustic speed of said material of the shock wave guide member, and spalling said material at a downstream end of the shock wave guide member to create a path of lesser resistance for a blast following the shock waves; causing said ensuing blast following the shock waves to follow said path of lesser resistance and removing said cracked material to render said path open; deflecting any stray component of the shock waves back into the guide member and inhibiting propagation of any said stray component of the shock waves in a direction toward said foot in the sole volume of the article of footwear by means of a layer of material (energy dissipation material 19) having a low acoustic speed arranged between the shock wave guide member and an inner sole of the article of footwear.

***Allowable Subject Matter***

6. Claims 20-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 9-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown is protective footwear analogous to applicant's instant invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JILA M. MOHANDESI whose telephone number is (571)272-4558. The examiner can normally be reached on MONDAY-FRIDAY 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey YU can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JILA M MOHANDESI/  
Primary Examiner, Art Unit 3728

JMM  
June 24, 2008